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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

22 Cr. 352 (JSR)

5 SEQUAN JACKSON,

6 Defendant.

7 -----x

Conference

8 October 21, 2022  
9 3:50 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13  
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the  
Southern District of New York

17 BY: RUSHMI BHASKARAN

ADAM S. HOBSON

18 Assistant United States Attorneys

19 SUSAN G. KELLMAN

20 Attorney for Defendant

21  
22 Also Present:

23 Marlon Ovalles, Pretrial Services Officer, SDNY

24 Chris La Tronica, Esq.

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1 (Case called)

2 THE DEPUTY CLERK: Will everyone please be seated and  
3 will the parties please identify themselves for the record.

4 MS. BHASKARAN: Good afternoon, your Honor. Rushmi  
5 Bhaskaran and Adam Hobson for the government. We are joined at  
6 counsel table by Marlon Ovalles of Pretrial Services.

7 THE COURT: Good afternoon.

8 MS. KELLMAN: Good afternoon, your Honor. Susan  
9 Kellman and, your Honor, I am assisted at counsel table by  
10 Chris La Tronica. Mr. La Tronica is a member of the Eastern  
11 District -- I hate to say those words here, but the Eastern  
12 District mentoring program, and we have been trading back and  
13 forth since we all have a lot of trials. I will write to your  
14 Honor and explain a little bit more about that, but that is why  
15 he is at counsel table.

16 THE COURT: Okay.

17 MS. KELLMAN: He is assisting me.

18 THE COURT: Okay. We are here for the request for  
19 release on bail. Before I hear from counsel, in the  
20 submissions that I received from Ms. Kellman, there was one  
21 thing that struck me as very contrary to what I had previously  
22 been told, and that is that "much of the discovery has not yet  
23 even been produced." That's a quote from her letter.

24 Now, this case began some months ago. At that time  
25 the government indicated that it was promptly turning over the

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1 discovery. At a subsequent conference, the government  
2 represented that all discovery had been turned over. In  
3 addition, at the request of defense counsel, the Court had  
4 appointed a discovery coordinator who also represented  
5 explicitly to the Court that all discovery had been turned over  
6 to defense counsel, along with her analyses of much of the  
7 discovery that of course would ease the burden of any new  
8 counsel getting into the case.

9 Now, this was all before you were appointed because  
10 your client wanted new counsel and I granted that request. But  
11 given those representations, I don't understand. Are you sure  
12 you haven't received all discovery?

13 MS. KELLMAN: No, I have not received any discovery,  
14 Judge. But just to fill in the Court, and I will start from  
15 when I was assigned, I reached out to Mr. Cecutti or he reached  
16 out to me and he told me that he hadn't yet received any  
17 discovery. So I reached out to -- any discovery. So I reached  
18 out to the coordinator, and she told me that she had just put  
19 it in the overnight mail to all of the lawyers and that they  
20 should be getting it over the weekend. And so as soon as  
21 Mr. Cecutti got it -- I believe she also sent me a copy, but by  
22 Monday I had two copies of it, but I hadn't had any at the  
23 time.

24 THE COURT: Okay. But you have had it.

25 MS. KELLMAN: That's the first production. I think it

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1 is the first three productions. But since then, your Honor,  
2 including, I think, up to yesterday, we have been getting  
3 discovery on an ongoing basis, on a rolling basis and it is not  
4 an insignificant amount of discovery. It includes a tremendous  
5 amount of phone data --

6 THE COURT: Well, of course, you may recall that in  
7 part -- this is before you were in the case, but if you examine  
8 the record, before the current trial date was set for your  
9 client and several others, the Court, based on, among other  
10 things, the volume of discovery and also the schedule of  
11 various counsel and so forth, had scheduled a trial for May 1,  
12 and that date is still available to you and your client if you  
13 want it. But he didn't want it. He said, no, I want a speedy  
14 trial. And I questioned him and the others who so requested  
15 it. I said: You understand that although, in my view, from  
16 what I understand of the case, counsel can be prepared to try  
17 this case, they would be even more prepared if they had all the  
18 way to May. And he said, yes, he understood that, but he still  
19 wanted the earlier trial date. So some of this is, I think,  
20 implicit in the choices he made.

21 However, let me ask the government.

22 MS. KELLMAN: Your Honor, if I may add one thing?

23 THE COURT: Yes.

24 MS. KELLMAN: At the time, of course, he said that, I  
25 believe they didn't have any discovery. There was still no

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1 discovery had been produced. But now, as I said, we have  
2 gotten the first production. But the first production is  
3 really critical in a respect because when the coordinator, the  
4 discovery coordinator turned it over, she had downloaded a  
5 significant portion of it with a program that nobody I knew  
6 could open. And I had a young lawyer who works for me spend an  
7 entire day downloading it. It took all day to download, and  
8 then it didn't work. And so we have had a tremendous amount of  
9 difficulty. I didn't try it myself because I wouldn't have  
10 been able to.

11 THE COURT: Because lawyers are not technologically  
12 adept.

13 MS. KELLMAN: But the young ones are. And then when  
14 she couldn't do it, I turned it over to my daughter, who is a  
15 video expert. So she did open it eventually. But we had to  
16 use a different computer and a different program, and it took  
17 almost three days to just open the material, forget going  
18 through it. Now, that isn't to say that my client can open it  
19 at the jail. In a million years he couldn't open it.

20 THE COURT: So but I didn't understand you to be  
21 making an application for an adjournment based on all --

22 MS. KELLMAN: I'm not.

23 THE COURT: You are not.

24 MS. KELLMAN: My client still would like to go to  
25 trial --

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1 THE COURT: Very good.

2 MS. KELLMAN: -- notwithstanding our ability to go  
3 through all of the discovery.

4 THE COURT: The other logistical problem -- I do want  
5 to hear from the government about discovery in a minute, but  
6 the other logistic problem you mentioned was problems getting  
7 access to him. So this is a frequent problem. My policy,  
8 which, again, because you were new you probably didn't hear me  
9 say this, but I have said it in virtually every case where a  
10 trial is looming, if you can't get adequate access to your  
11 client, you and the government then need to call me and I will  
12 call the warden. And last I checked, the warden has some say  
13 in these things.

14 MS. KELLMAN: Some say.

15 THE COURT: No, indeed, every time I have made this  
16 request to a warden, that has solved the problem. Because the  
17 warden understands that the case has to be given priority  
18 because of the looming trial.

19 So I am happy to do that if you continue to have  
20 problems at the MDC.

21 MS. KELLMAN: I think that would be -- I'm assuming  
22 that we still have the option of bail, but assuming that we  
23 don't --

24 THE COURT: Of course if I grant bail, this is all  
25 moot.

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1 MS. KELLMAN: This is academic, of course. But on the  
2 off chance that we need it, I will say that we have had quite a  
3 bit of difficulty just getting -- there is a new rule at the  
4 MDC that says now you can bring in a laptop. You just have to  
5 fill out a form and you go in and you take the laptop, which is  
6 great, because my client can't open the discovery himself.  
7 Then we can bring it in and we can show it to him on the  
8 laptop, except for one thing, they don't let you in when you  
9 have it. You have to fill out the form, and now it has to be  
10 approved. Well, it is already approved. It is preapproved.  
11 We have gone through this every single --

12 THE COURT: I don't want to take all day on --

13 MS. KELLMAN: I hear you.

14 THE COURT: -- this side issue. My very simple-minded  
15 approach is to call the warden and say, Make it work, and it  
16 always succeeds.

17 MS. KELLMAN: There you go. Thank you.

18 THE COURT: Now, what's the story on discovery?

19 MS. BHASKARAN: Your Honor, we stand by all of our  
20 prior representations about the production of discovery. It  
21 was substantially produced to the discovery coordinator by the  
22 deadline set by the Court. I believe it was August 16 or  
23 thereabouts. It then took the discovery coordinator several  
24 weeks to get that discovery to defense counsel. But as your  
25 Honor noted, discovery counsel got the discovery to defense

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1 counsel.

2 We continue to make productions as we receive  
3 material. It is in our possession, and we push it out as soon  
4 as we can. The materials that we are pushing out now are  
5 electronic devices that were seized at the time of the takedown  
6 in this matter. It takes time to be able to actually get into  
7 those devices. Sometimes they are password protected. That  
8 takes time. Once we extract them, we are just pushing these  
9 out to defense counsel without even reviewing them ourselves,  
10 quite frankly. We are just getting the data out as soon as  
11 possible. We are then following up with sets of identified  
12 data from those devices so defense counsel knows the material  
13 that we think is actually responsive to our search warrants.

14 THE COURT: Why are you only getting this material  
15 now?

16 MS. BHASKARAN: It is a matter -- these devices are in  
17 the hands of technicians who --

18 THE COURT: Yes, and you knew that from day one. So  
19 my question is, what steps have you taken to say to the  
20 technicians: This is not just another matter. This is a  
21 matter in which it is critical that discovery be produced as  
22 promptly as possible, and you have a choice, you can either put  
23 more hands on it and get it quicker, or you can come in to  
24 Judge Rakoff's courtroom and find out whether you should be  
25 held in contempt?



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1 MS. BHASKARAN: Your Honor, some of these devices are  
2 in fact password protected, so it's a matter of hooking them up  
3 to a machine and the machine trying to crack them open. But we  
4 have communicated to our agents the urgency of the production  
5 of these materials, to be able to extract them and turn them  
6 over.

7 THE COURT: What's your worst-case scenario as to when  
8 you can totally, completely finish discovery?

9 (Counsel confer)

10 MS. BHASKARAN: Your Honor, there are still certain  
11 devices that we have yet to get into because they are password  
12 protected and the machine has not cracked into them yet. So  
13 perhaps we will never get into those devices and we will not  
14 use them.

15 THE COURT: Well, all right. Here is what I think  
16 makes sense. Any discovery that you intend to use in any  
17 respect must be produced by a week from today no matter what.  
18 Anything produced thereafter cannot be used by the government.  
19 Understood?

20 MS. BHASKARAN: Understood, your Honor.

21 THE COURT: Very good.

22 All right. Now let's talk about bail. So  
23 Ms. Kellman, we are back to you.

24 MS. KELLMAN: You may have taken away a lot of my  
25 motivation, but I will persevere.

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1           The reality is, Judge, that preparing with our client  
2 has been very, very difficult. He has difficulty -- even  
3 assuming that the warden makes every accommodation and we can  
4 get in and we can see him as often as we would like, he can't  
5 review the discovery separately and we can't sit in the jail  
6 all day and all night reviewing the discovery.

7           THE COURT: Yeah, but he knew all that when he made  
8 the choice. This is *déjà vu* as far as I'm concerned. It was  
9 his choice, which I totally understand, that he, rather than  
10 sit in jail for many more months, would rather go forward. He  
11 even, in his initial application, said that he was directing  
12 his counsel to withdraw any motions and not to file any  
13 pretrial motions. And I explained to him and to all the people  
14 who are going forward that that could -- those motions could be  
15 very helpful to the defense, they could narrow the evidence,  
16 they could narrow the charges. One of the defendants said,  
17 well, he had heard through the other people at the MDC that  
18 those motions rarely succeed. I told him that was not true in  
19 my court. I also explained to him that I thought he might want  
20 to reconsider relying for legal advice on people whose legal  
21 advice is so good that they are sitting there in jail. And so  
22 but he -- all of this was explained, and so I will -- why don't  
23 you do this. If you can reach the warden today after we  
24 conclude this proceeding—and that may not be possible because  
25 it is late—but you and the government should try jointly to

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1 reach him, and if you do reach him, explain that this is -- and  
2 I don't call him about every case, but I call him about cases  
3 like this, that we want to make arrangements to get much  
4 greater access to your client. This is assuming I deny your  
5 motion. If I grant your motion --

6 MS. KELLMAN: Which I can't imagine, but just in the  
7 off chance, yes, Judge.

8 THE COURT: If that doesn't have any effect or if he  
9 doesn't say, well, you know, okay, or something like that, then  
10 call me first thing Monday morning and I will call him before  
11 noon Monday.

12 MS. KELLMAN: Thank you, Judge.

13 THE COURT: All right. And that should be a joint  
14 call with the government.

15 MS. KELLMAN: Of course.

16 THE COURT: Okay.

17 MS. KELLMAN: The bail application.

18 THE COURT: Back to -- yes.

19 MS. KELLMAN: I would start with the fact that, as I  
20 am sure your Honor knows, Pretrial Services did recommend that  
21 Mr. Jackson be released on bond --

22 THE COURT: Yes, I saw that.

23 MS. KELLMAN: -- and believed that there was a  
24 condition or a set of conditions that would guarantee -- that  
25 would both protect the community and also guarantee his

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1 appearance in court.

2 The Pretrial Service agency recommended three  
3 financially responsible cosigners. We have offered six to your  
4 Honor. They are all people who have immediate connections to  
5 this defendant—his mother, his father, his girlfriend, a  
6 friend of his who's been a dear friend since they were children  
7 in elementary school. All of them work. All of them have good  
8 jobs. I have listed their employment for your Honor, but they  
9 are mental health workers, and a --

10 THE COURT: Yes, and I am sure that satisfactory  
11 people could be found. This, of course, would have to be  
12 subject to being checked out by the government, but I am  
13 assuming, and as I read your letter, you are also, although  
14 it's not your first preference, you are also willing to have  
15 home confinement and electronic monitoring if that is the route  
16 the Court wishes to go.

17 MS. KELLMAN: Correct, your Honor. And I would also  
18 say that we have -- we are certainly prepared to limit his  
19 ability to travel, although he does also have a job offer --

20 THE COURT: That's why I say it is not your first  
21 preference.

22 MS. KELLMAN: Because if he could work, that would  
23 obviously be helpful to his family. But it seems to me that of  
24 course we will have easier access to him and he will be able --  
25 for us, in this short amount of time, to prepare appropriately

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1 for the case and Pretrial, which is tasked with making a  
2 determination as to whether or not they think he can be secure  
3 and protect the community at the same time, that we would ask  
4 your Honor to consider that, as I know you will.

5 But also my client had a number of -- wait. Two  
6 things. One, with respect to the bail itself, I have before I  
7 put this application together, your Honor, asked every one of  
8 the potential cosigners for their -- a copy of their work  
9 identification so I could confirm that they were in fact  
10 working, a copy of tax returns they filed last year or their  
11 W-2s, and their bank statement, so I have gotten all the --

12 THE COURT: What about -- as I say, I'm confident that  
13 you can satisfy that particular prong, but what about danger to  
14 the community?

15 MS. KELLMAN: Well, if he is locked at home, Judge --

16 THE COURT: Well --

17 MS. KELLMAN: -- and it seems to me that we would cut  
18 down the same amount of difficulty as if we are talking  
19 about -- I assume the only thing we are talking about is using  
20 the phone, because he won't be able to leave the house and he  
21 will have GPS monitoring, so your Honor and Pretrial will know  
22 where he is at all times. But if we were able to secure his  
23 person in the house, then I would suggest he has probably the  
24 same access to the telephone that he has at the MDC, so I don't  
25 see how being in or out further that level of protection. He

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1 can make --

2 THE COURT: All right. Let me take the liberty of  
3 interrupting and hear from the government.

4 MS. BHASKARAN: Thank you, your Honor.

5 We believe that continued detention is appropriate  
6 here because of the danger to the community that this defendant  
7 presents. He is the second defendant on the indictment. That  
8 was a meaningful choice. He was Jatiek Smith's lieutenant, and  
9 he was one of the leaders of this very violent conspiracy that  
10 extorted the fire mitigation industry. He not just knew about  
11 the violence that the First Response enterprise was  
12 perpetrating on this industry, he directed it, and at least on  
13 one instance he participated in that violence. And so he is  
14 instrumental to this enterprise being able to take over the  
15 industry through violence and through extortion. He in fact we  
16 believe brought in Jatiek Smith into the industry after Smith  
17 left jail. Mr. Jackson was working in the industry before  
18 then. And he became Jatiek Smith's trusted lieutenant. They,  
19 we understand --

20 THE COURT: The question is not -- what you are saying  
21 is highly relevant, but the question is why, if he were subject  
22 to home confinement and electronic monitoring, he would still  
23 present a danger to the community in the four weeks or so,  
24 well, five weeks or so before trial.

25 MS. BHASKARAN: This is a defendant that the evidence

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1 will show can do quite a lot of damage and danger just with his  
2 phone. As the Court is probably aware, for just a two-month  
3 period in our investigation we had a wire on two phones. One  
4 of those phones was Mr. Jackson's phone. And while we were up  
5 on a wire, Jackson called one of his subordinates and told that  
6 subordinate to go make a show of authority against an industry  
7 participant that was not abiding by the First Response rules.  
8 What happened to that participant was that he was later  
9 assaulted by several individuals. Those individuals, we  
10 believe, were associated with First Response. After being  
11 assaulted, they took the victim's identification card and took  
12 a photograph of it, which was an obvious effort to intimidate  
13 that witness from speaking to the police. So, your Honor, yes,  
14 even if he is stuck at home, we believe that he could do quite  
15 a decent amount of damage just by using the phone. He is a  
16 member of the Bloods. He had Blood literature in his home at  
17 the time of his arrest. He had two firearms in a lockbox  
18 underneath his bed with his passport. So we think that speaks  
19 volumes to who he is. He could do quite a lot of damage with  
20 the phone, your Honor.

21 THE COURT: Let me hear finally from defense counsel.

22 MS. KELLMAN: Well, your Honor, just with respect to  
23 the government's comments, of course I assume—and I think  
24 safely, though I don't like to assume—that those guns are no  
25 longer in my client's home and his passport of course would be

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1 one of the conditions would have to be surrendered. So --

2 THE COURT: No. The point, the general point that the  
3 government is making is that your client has a history of  
4 helping organize acts of violence or attempted violence or  
5 threats of violence that have continued until quite recently  
6 and that even by having access to the phone and the other small  
7 amounts of opportunities presented, he could still exercise  
8 that in a way, for example, that might serve to intimidate  
9 witnesses.

10 So that is the gist of what they are arguing.

11 MS. KELLMAN: And my argument, Judge, again, is he has  
12 access to the telephone if he wants it at the jail, as well.  
13 And sadly, but truthfully, for \$50, anybody can use any cell  
14 phone that they want. The guards make them available on a  
15 minute-by-minute basis. I have clients asking me if they can  
16 have \$50 so they can text their relatives. I said I can't  
17 really be a part of that, thank you very much. But if he  
18 wanted to be doing that from the jail, he wouldn't have any  
19 difficulty doing that from the jail.

20 And also to the point of the subordinate, he may have  
21 well spoken to a subordinate. I wasn't there. I haven't heard  
22 a recording of that conversation. But what the subordinate did  
23 with his own judgment and the decision that the subordinate  
24 made, we don't know if Mr. Jackson told him to be violent or to  
25 threaten violence or if this was done on the subordinate's own



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1 and maybe that subordinate was disciplined for taking action  
2 that Mr. Jackson thought was inappropriate. I don't know the  
3 details of that yet, and I will certainly learn them. But I  
4 think that to assume always that violence comes back to him, he  
5 had worked in the industry for quite a while before the charged  
6 period of the indictment, which starts actually many years  
7 after he's been in the industry without complaint --

8 THE COURT: Let me ask you this: Supposing the  
9 conditions of bail were home confinement 24/7 and no release  
10 except to meet with his attorneys, and that the -- either no  
11 telephone or calls that would be restricted solely to his  
12 attorney, which could then be themselves monitored, is that  
13 acceptable to you?

14 MS. KELLMAN: Is that at my direction --

15 THE COURT: Yes.

16 MS. KELLMAN: -- or the government's, your Honor?

17 Yes, I think that would be acceptable.

18 THE COURT: So let me go to the government. So if  
19 there is home confinement, electronic monitoring, he is not out  
20 at all for a job or anything else -- by the way, where is he  
21 going to be living?

22 MS. KELLMAN: Let me just make sure.

23 (Defense counsel and defendant confer)

24 MS. KELLMAN: Your Honor, my understanding is he would  
25 be living with his girlfriend on Metropolitan Avenue and they

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1 have a son together as well, a two-year-old son, and he would  
2 be living there.

3 THE COURT: Okay. I want to ask the Pretrial Services  
4 person if this can be arranged, but some arrangement where both  
5 any existing telephone at that residence -- well, period, that  
6 he can only use the existing telephone and that that would be  
7 monitored with the consent of the girlfriend, so that it could  
8 be detected who the calls were made to, and it would be limited  
9 to calls to his attorney and no one else. Why wouldn't that be  
10 sufficient protection against danger to the community?

11 MS. BHASKARAN: So, your Honor, for one thing, every  
12 phone -- if the girlfriend has a phone, Mr. Jackson could have  
13 access to that. There could be other phones in the home that  
14 we don't know about that we can't find that are being used.  
15 Communication could be made not just from a landline, but more  
16 likely on the Internet, so Internet usage would need to be  
17 monitored. There are just many opportunities for someone to  
18 find a way to communicate with the outside world, and everyone  
19 in the household would -- in order for this to work and to be  
20 enforceable, I would imagine that everyone in the household  
21 would have to be subject to this communication-less type of  
22 existence.

23 THE COURT: So you are right that it would have to  
24 be -- I gather there is only one other adult in the place and a  
25 two-year-old child. I think we can risk it with a two-year-old

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1 child. So, yes, you would have to have the consent of the  
2 girlfriend, which might include—which she may not be willing  
3 to do—putting all of her electronic equipment subject to daily  
4 monitoring by the Pretrial Services.

5 Let me ask Pretrial Services, maybe I am talking about  
6 something that's not really feasible.

7 THE PROBATION OFFICER: I was thinking to myself --  
8 good afternoon, your Honor, by the way.

9 My understanding of Pretrial Services, when it  
10 conducts monitoring of electronic devices, it is usually  
11 limited for those defendants that are being charged in sex  
12 offense cases, such as child pornography, where we do install a  
13 program that lets us know what websites are being visited, what  
14 images are being viewed.

15 I think what's being discussed here is something  
16 similar to a wire being listened in to or checking the  
17 defendant's phone for text messages and things of that nature.  
18 To my understanding, your Honor, Pretrial does not have the  
19 capability of conducting the monitoring that is being discussed  
20 this afternoon. However, I can confirm that, but that's my  
21 understanding that we do not do that, your Honor.

22 THE COURT: All right. So here is where I think I  
23 come out.

24 I think the main danger here is danger to the  
25 community, and there is, I'm sorry to say—this has nothing to

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1 do with the defendant *per se*—there is a long history in this  
2 court of persons in similar groups, like the Bloods, of not  
3 only violence, but witness intimidation, and that is a very  
4 great concern to the Court with a trial coming up so soon.

5           Nevertheless, if a methodology could be worked out  
6 where in fact it would be the functional equivalent of his  
7 being in a cell, where, for example, the phone calls are  
8 recorded, but it would be in his home or his girlfriend's home,  
9 where he could have much more complete access to his counsel, I  
10 think that would be arguably acceptable to the Court. And the  
11 reason I am phrasing it that way, and I am sorry it is a Friday  
12 afternoon, but I think what counsel jointly needs to do have a  
13 discussion on Monday with Pretrial Services and explain to them  
14 that the Court is at least arguably amenable to a release so  
15 that there can be greater contact with counsel and greater  
16 preparation for trial, provided that there are enough  
17 safeguards to genuinely prevent against even the possibility of  
18 witness intimidation or other violence, and then we will  
19 reconvene.

20           And I'm sorry, because I see a lot of fine people came  
21 down here today, but I think it is to everyone's benefit that I  
22 not make this ruling until I know exactly what is or is not  
23 possible. So we will reconvene -- and after you have had that  
24 discussion with Pretrial Services, jointly call my chambers and  
25 we will figure out -- I have a trial starting Monday, but we

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1 will find a way to squeeze things in. All right?

2 So the motion technically is denied for now but very  
3 much open to --

4 MS. KELLMAN: Or held in abeyance.

5 THE COURT: Or held in abeyance. That's even better.  
6 I like that. Very good. Thanks.

7 MS. KELLMAN: Thank you, your Honor.

8 oOo